JMB KELANA SQUARE v. PERANTARA PROPERTIES SDN BHD & ORS

HIGH COURT MALAYA, SHAH ALAM
ALICE LOKE YEE CHING J
[CIVIL SUIT NO: BA-22NCVC-513-11-2019]
8 APRIL 2025

Abstract – *(i) There should be no legal impediment for a party to depart from its pleadings, if after it referred to the evidence adduced at trial, it decided to reduce its claim at the end of the trial; and (ii) A joint management body or management corporation, considering that it had proprietary right over common property of a strata property, should be entitled to receive a portion of a compensation paid for a compulsory acquisition, proportionate to the area of the common property.*

LAND LAW: *Acquisition of land – Objection against compensation – Suit by joint management body ('JMB') against developer to dispute developer's entitlement towards whole of compensation sum awarded – Whether JMB entitled to portion of compensation sum which was proportionate to area comprising common property – Whether by reducing claim at end of trial, due to evidence adduced at trial, JMB had departed from its pleadings – Whether by failing to take steps to attend land inquiry, JMB was estopped from alleging developer was holding portion of compensation as constructive trustee – Whether part of land common property – Whether conduct of developer warranted award of exemplary damages*

The defendant was the developer of a strata project known as the Kelana Square Business Centre ('Kelana Square'). Whereas the plaintiff was a corporate body incorporated under the Building and Common Property (Maintenance and Management) Act 2007 to maintain and manage the common property in the Kelana Square. Prior to the issuance of the strata titles, certain parts of the Kelana Square, measuring up to 2,284.582 sqm ('acquired land'), was gazetted by the Selangor State Authority for compulsory acquisition. The acquisition was in relation to the Light Rail Transit (LRT) 3 project. Nevertheless, after the conclusion of the land inquiry held by the Land Administrator ('LA'), the defendant, as the proprietor of the acquired land as stated in the *Gazette*, was awarded compensation in the sum of RM13,562,092 ('compensation'). That had caused the plaintiff to file the present suit to dispute the defendant's entitlement towards the whole of the compensation. According to the plaintiff: (i) 1,121 sqm of the acquired land was common property comprising not only car parks, but also three refuse chambers, staircase and pockets of vacant land. Being the body which legally managed the common property, the plaintiff posited that it was entitled to receive portion of the compensation proportionate to 1,121 sqm of the acquired land, *ie*,

A RM6,053,400; (ii) 1,121 sqm of the acquired land was not lawfully belonged to the defendant, hence, the same was actually holding a portion of the compensation as a constructive trustee for the benefit of the plaintiff; and (iii) during the tenth annual general meeting ('tenth AGM') chaired by the defendant's representative, the defendant had implicitly acknowledged
B the plaintiff's right to a portion of the compensation. However, after the compensation was paid, the defendant had kept the plaintiff in the dark. Considering that the defendant had unlawfully withheld the said portion, which was an action that was not only contumelious, but also in disregard of the plaintiff's interest, exemplary damages ought to be awarded to the
C plaintiff. On the other hand, the defendant, in resisting the suit, submitted that: (i) 1,121 sqm of the acquired land comprised of car parks only, which was not common property; (ii) the plaintiff had radically departed from its pleadings. In its statement of claim, the plaintiff stated that the whole acquired land belonged to it. But at the trial, the plaintiff took the position
D that only 1,121 sqm of the acquired land was common property; (iii) the plaintiff was estopped from alleging that the defendant had held a portion of the compensation as a constructive trustee. This was because, although the plaintiff was aware of the acquisition, it had not taken any steps to participate in the land inquiry, *ie*, by instituting land reference proceedings under s. 37 of the Land Acquisition Act 1960 ('LAA'); and (iv) compensation for
E compulsory land acquisition must be made in due observance with the principles enumerated in art. 13 of the Federal Constitution and the provisions of the LAA. As the defendant was named as the proprietor of the acquired land in the *Gazette*, it could be surmised that the compensation could only be awarded to the defendant.

F **Held (allowing suit):**

(1) A reduction in the area said to be common property was not a departure from the pleadings as contended by the defence. The plaintiff's case was premised on the fact that the defendant was not entitled to the
G compensation, in so far as it was received in respect of common property. The only departure, if at all, was that the area of the common property was now less than what was originally pleaded. Hence, no valid objection could be made to the plaintiff for reducing its claim. Based on the evidence adduced at the trial, a lesser area was shown to be common property. There should be no legal impediment for a party
H to reduce its claim at the end of the trial in line with the evidence adduced. The defendant would not be prejudiced if the plaintiff's claim was reduced. It would also not cause any alteration in the character of the defence. It was immaterial whether the plaintiff's claim was for the entire acquired land or only part of the acquired land. (paras 32-34)

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(2) Section 37 of the LAA did not arise here. The said section is only applicable to an interested person who has made a claim under s. 10 of the LAA. The defendant must prove that a notice was duly served on the plaintiff in accordance with the provisions of the LAA. However, from the facts, all the requisite forms under the LAA were only addressed to the defendant. It was therefore not open for the defendant to contend that s. 37 of the LAA was applicable to the plaintiff. (paras 39-41)

(3) During the tenth AGM, after being queried on whether the compensation would be shared with the plaintiff, DW1, a representative of the defendant, did not give any affirmative answer. The same happened during the 11th AGM when the matter of the compensation was raised. The plaintiff had relied on the defendant for updates on the compensation. The reliance was not unreasonable as DW1 had, on various occasions, represented that she was knowledgeable with respect of the acquisition process. However, when the defendant was paid the compensation sum, the plaintiff was not informed. As such, to conclude on the point of estoppel, it was without merit. The plaintiff's claim was founded on the fact that the defendant had held a portion of the compensation as a constructive trustee, which had nothing to do with the issues raised in a land reference under s. 37 of the LAA. (paras 42-46)

(4) After considering the evidence of a licensed surveyor called by the plaintiff ('PW2'), and his findings and the basis for his conclusion that 1,121 sqm was common property, PW2's opinion was logical, reasonable and persuasive. Notwithstanding rigorous cross-examination, PW2's evidence was not shaken. On the other hand, the defendant had not offered any rebuttal evidence. No other witnesses, apart from DW1, had been called by the defendant. The only expert evidence before the court was therefore only PW2. Furthermore, there was corroborative evidence that the acquired land comprised more than just car parks. This evidence substantiated the plaintiff's claim that the acquired land also included three rubbish chambers, car park office and boom gates islands, which were all common properties. This itself demolished the defence of the defendant. There was no hesitation to hold that the acquired land included common property, and such area was 1,121 sqm. Given such finding, the defendant's entitlement to the compensation must be limited to the portion in respect of the car parks, *ie*, 1,163 sqm only. (paras 55 & 65-70)

(5) Pursuant to s. 17B of the Strata Titles Act 1985, although no management corporation was formed before the issuance of strata titles, the same was an eventual successor of the plaintiff. In view of the plaintiff's proprietary right over the common property, and the defendant had received the compensation paid for part of the acquired

land, which was common property, there was merit in the plaintiff's contention that the defendant had held a portion of the compensation as a constructive trustee for the plaintiff. (paras 71-74)

(6) The plaintiff had adopted a straightforward mathematical formula by multiplying the area of common property with the market value as decided upon by the LA in the land inquiry. The plaintiff's reliance on the LA's valuation at RM5,400 per sqm was correct. In determining compensation, the LA was to have regard to the principles in determining market value as provided for in the First Schedule to the LAA. Market value was determined for the entire area acquired at the material date with no distinction made for car parks or common property. If there was any loss arising from a particular use of the land, compensation could be provided for. The defendant was compensated for the loss occasioned from the acquisition of its car parks, development costs and other expenses. Given these, the plaintiff had succeeded in proving, on a balance of probabilities, that 1,121 sqm of the acquired land comprised of common property, and that the defendant had held the sum of RM6,053,400 as a constructive trustee for the plaintiff. (paras 76 & 79-80)

(7) The court was not persuaded that the defendant's conduct warranted an award of exemplary damages. The conduct would have to be more reprehensible than a mere withholding of information to attract an award of exemplary damages. The facts must also fell within the principles enunciated in *Rookes v. Barnard*. However, the factual matrix of this case did not fit into any of the categories mentioned in the said case. (para 83)

Case(s) referred to:

3 Two Square Sdn Bhd v. Perbadanan Pengurusan 3 Two Square & Ors; Yong Shang Ming (Third Party) [2018] 4 CLJ 458 HC ***(refd)***

Lee Ah Chor v. Southern Bank Bhd [1991] 1 CLJ 667; [1991] 1 CLJ (Rep) 239 SC ***(refd)***

Muniandy & Anor v. Muhd Abdul Kader Muhd Saheed & Ors [1989] 2 CLJ 577; [1989] 1 CLJ (Rep) 116 SC ***(refd)***

Perantara Properties Sdn Bhd v. JMC-Kelana Square & Another Appeal [2016] 5 CLJ 367 CA ***(refd)***

Perbadanan Kemajuan Pertanian Selangor v. JW Properties Sdn Bhd [2017] 8 CLJ 392 FC ***(refd)***

Rookes v. Barnard [1964] 1 All ER 367 ***(refd)***

Samuel Naik Siang Ting v. Public Bank Bhd [2015] 8 CLJ 944 FC ***(refd)***

Teoh Kiang Hong v. Theow Say Kow & Other Appeals [2025] 2 CLJ 683 FC ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 10, 11, 37, First Schedule

Strata Titles Act 1985, ss. 4, 10(1)(b), 17(3), 17B

For the plaintiff - Rajasegaran M Karuppiah & Kalvinder Singh Bath; M/s Pretam Singh, Nor & Co
For the 1st defendant - Ashok Kandiah & Celinne Teh Sze Ning; M/s Haris Ibrahim Kandiah Partnership

Reported by Syamim Ariffin

JUDGMENT

Alice Loke Yee Ching J:

Introduction

[1] The present suit concerns only JMB Kelana Square and Perantara Properties Sdn Bhd as the plaintiff had withdrawn the suit against the second and third defendants. In view of the withdrawal, for the purpose of this judgment, Perantara Properties Sdn Bhd will be referred to as the defendant.

[2] The defendant is the developer of Kelana Square Business Centre. After its completion, and before strata titles were issued, part of the development was acquired by the Selangor State Authority for the construction of LRT3 project. The compensation monies amounting to RM13,562,092 in respect of the acquisition were paid by the Land Administrator to the defendant.

[3] The plaintiff disputes the defendant's entitlement to the entire compensation monies. It contends that as the area acquired also comprised of common property, it is entitled to a portion of the monies. The plaintiff therefore seeks, *inter alia*, to recover from the defendant the amount of RM6,053,400 which it contends, is held on constructive trust for the plaintiff.

Salient Facts

[4] The primary facts are not disputed in so far as the documents originate from the Government departments.

[5] The defendant is a locally incorporated company, and the developer of a strata project known as the Kelana Square Business Centre ("Kelana Square"). It is an integrated commercial development with shops and office blocks as well as surface level and basement car parks. The development was built on master title HS(D) 44644 PT No. 11540. This title was subsequently replaced with title PN No. 97181 Lot No. 72868 Bandar Petaling Jaya, Negeri Selangor. The sale and purchase agreements of the parcels in the development were executed between the years 1996 to 2002.

[6] The defendant was issued the certificate of fitness for occupation in respect of the development by the Majlis Perbandaran Petaling Jaya on 27 November 2002.

[7] The plaintiff is a body corporate incorporated under the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) to maintain and manage the common property in Kelana Square. It was incorporated on 25 March 2008. Upon its incorporation, the maintenance and management of the common property of the parcels in the development was handed over to it by the defendant.

[8] On 20 August 2014, the defendant's land surveyor from the firm of Ukur Kemas, submitted the application for subdivision and issuance of strata title. The submission was duly acknowledged by Jabatan Ukur dan Pemetaan Selangor ("JUPEM") on 15 September 2014. The office of the Selangor Land and Mines ("PTG") also forwarded the requisite documents to JUPEM by letter dated 27 August 2014, for its deliberation at its Mesyuarat Jawatankuasa Khas Strata.

[9] On 12 June 2015, Mr Long Chan Pai, the surveyor from Ukur Kemas prepared the first set of accessory parcel plan for the purpose of issuance of strata titles. At this juncture it needs to be mentioned that the submission was pursuant to s. 10(1)(b) of the Strata Titles Act 1985, prior to the Act being amended. The applicable law then was that the application for subdivision and issuance of strata titles can only be made after the building is completed, *ie*, within six months from the date of certificate of completion and compliance ("CCC") or within six months from the date of the sale in the event the sale takes place after the issuance of the CCC.

[10] On 8 March 2016, JUPEM informed PTG that the application for subdivision and issuance of strata titles had been considered and found to be in order.

[11] However, before the titles could be issued, an intervening event took place. On 23 February 2017, *vide* the Selangor Government *Gazette* No. 658 of 2017, part of land identified as Lot 72686 PN 97181 measuring 1,686.8656 square metres ("sqm") was declared compulsorily acquired for the purpose of the light rail transit project from Bandar Utama to Johan Setia, Petaling District. The defendant was stated as the proprietor of the acquired land in the *Gazette*.

[12] Pursuant to the provisions of the Land Acquisition Act 1960 ("LAA"), a notice of enquiry was issued in Form E dated 3 April 2017 to the defendant to attend an enquiry to determine compensation. The defendant attended the enquiry, which was held on several dates.

[13] On 19 July 2017, the defendant wrote to PTG to request for the issuance of the strata titles to be put on hold in view of the acquisition. The PTG office replied on 26 July 2017 to inform that it had no objections to the defendant's request.

[14] The enquiry concluded on 12 November 2018 with Land Administrator making an award of RM13,562,092 payable for the acquired area of 2,284.582 sqm. Form H dated 12 November 2018 showed the award to comprise the following items:

(i) market value for 2284.582 sqm - RM12,336,742.80;

(ii) loss of parking income - RM37,044;

(iii) development costs - RM779,030; and

(iv) professional consultant's cost - RM284,275.20.

[15] On 28 May 2019, Form K was issued informing the defendant that the formal possession of 2,284.582 sqm of land identified as Lot 72868, PN 97181 had been taken. Attached to the Form K was a plan demarcating the acquired portion from the entire area comprised in the title.

The Plaintiff's Case

[16] The plaintiff contends that of the 2,284 sqm acquired, 1,121 sqm is common property, which it manages under the law. It comprises vacant plots of land, staircase and three refuse chambers. They do not form any part of any parcel or any accessory parcel. That being the case, it is entitled to the compensation monies in proportion to the area comprising common property.

[17] In support of its case, the plaintiff relies on both documentary and oral evidence. The first accessory parcel plan prepared by Mr Long Chan Pai (PW1) for issuance of strata title clearly shows the acquired portion to comprise not only of car parks, but three refuse chambers, staircase and pockets of vacant land. This was confirmed by PW2, the plaintiff's own expert after examining the plan prepared by PW1.

[18] PW2 computed the area which comprised car parks (accessory parcels) and found it to measure only 1,163 sqm. From this calculation, the balance of area acquired measuring 1,121 sqm is common property belonging to the plaintiff.

[19] Apart from the evidence of the licensed surveyors, the minutes of the preparatory meeting for the LRT3 project held on 20 February 2019 and attended by both the plaintiff and defendant's representatives, contained an admission by the defendant that common property was included in the acquired land.

[20] In view of the above, the plaintiff denies the defendant's right to the whole compensation sum. Consequently, the compensation monies paid to the defendant, in so far as it pertains to 1,121 sqm does not lawfully belong to the defendant. Instead, it holds the monies as a constructive trustee for the benefit of the plaintiff.

[21] The plaintiff's computation of its claim to part of the compensation monies is premised on the market value determined by the Land Administrator. Based on the market value of RM5,400 per sq metre, the plaintiff claims the amount of RM6,053,400 for an area measuring 1,121 sqm.

[22] The plaintiff also seeks exemplary damages against the defendant for its conduct in relation to the compensation monies. As far back as 2017, at the tenth AGM held on 17 August 2017 and the first preparatory meeting for LRT3 on 20 February 2019 chaired by the defendant's representative, the defendant had implicitly acknowledged the plaintiff's right to part of the compensation sum. Notwithstanding the position taken, it had kept the plaintiff in the dark when it was paid. It had therefore unlawfully withheld the monies from the plaintiff after receiving payment from the Land Administrator on 24 April 2019.

[23] The actions of the defendant in disregarding the interest of the plaintiff amount to contumelious conduct which warrants an award for exemplary damages.

The Defence Case

[24] The defendant denies the validity of the plaintiff's claim on the following grounds. Firstly, it contends that the acquired portion comprised of surface car parks which is not common property. The Court of Appeal had conclusively put to rest the issue of ownership of car parks in *Perantara Properties Sdn Bhd v. JMC-Kelana Square & Another Appeal* [2016] 5 CLJ 367 when it held that the car parks belonged to the defendant. That being the case, the acquired land belonged to it and it is entitled to the whole of the compensation monies.

[25] Secondly, the plaintiff's claim had radically departed from its pleading. The statement of claim filed states that the entire acquired land belonged to the plaintiff. However, at the trial the plaintiff took the position that only 1,121 sqm of the acquired land is common property.

[26] Thirdly, the plaintiff is estopped from alleging the defendant holds the monies as a constructive trustee. Although the plaintiff was aware of the acquisition, it did not take any steps to participate in the inquiry. On the other hand, the defendant was present to assert its claim. By the plaintiff's conduct or non-action, it is taken to have acquiesced to the defendant's right to the compensation monies. The filing of the instant suit is a backdoor attempt by the plaintiff to stake a claim to the monies.

[27] Finally, the compensation sum reflects only the defendant's interest. At the material time, the defendant was the registered proprietor. As compensation for compulsory land acquisition must be in due observance of the principles in art. 13 of the Federal Constitution, and the provisions of the

LAA, it can be surmised that the monies were awarded to compensate the defendant only. In addition, the amount claimed by the plaintiff cannot be a matter of simple mathematical calculation. If indeed the land acquired comprised of car parks and common property, the market value would differ depending on the use to which it was put to.

Issues To Be Tried

[28] From the contentions advanced by the parties, the following issues arise for determination:

(i) whether there is a departure from the pleadings;

(ii) whether the plaintiff is now estopped from claiming a portion of the compensation monies for its failure to participate in the inquiry to determine compensation;

(iii) whether the acquired land belonged only to the defendant in that it comprised of car parks only or whether 1,121 sqm of the acquired land is common property; and

(iv) whether the plaintiff's claim can be computed based on market value determined by the Land Administrator at the inquiry.

Analysis And Decision Of This Court

Whether The Plaintiff's Claim Is A Departure From Its Pleadings

[29] The contention that the plaintiff had radically departed from its pleadings arises from the fact that it is now making a claim in respect of a smaller area as common property. Consequently, it has reduced to only RM6,053,400.

[30] The plaintiff's position shifted in line with the evidence adduced at the trial that only 1,121 sqm was common property. The plaintiff then reduced its claim to the portion of land comprising common property.

[31] The objection against departure from pleadings stems from the principle that a party to the proceedings has the right to be informed of any point adverse to him that is going to be relied upon by the judge, and to be given the opportunity of stating what his answer to it is. See: (*Muniandy & Anor v. Muhd Abdul Kader Muhd Saheed & Ors* [1989] 2 CLJ 577; [1989] 1 CLJ (Rep) 116; [1989] 2 MLJ 416). Pleadings are also intended to define the issues for trial, from which the cardinal rule that parties are bound by their pleadings and are not allowed to adduce facts and issues which they have not pleaded. (See: *Lee Ah Chor v. Southern Bank Bhd* [1991] 1 CLJ 667; [1991] 1 CLJ (Rep) 239; [1991] 1 MLJ 428; *Samuel Naik Siang Ting v. Public Bank Bhd* [2015] 8 CLJ 944; [2015] 6 MLJ 1).

[32] I do not consider a reduction in the area said to be common property to be a departure from the pleadings as contended by the defence. The plaintiff's case has always been premised on the fact that the defendant is not entitled to the compensation monies in so far as it was received in respect of common property. The only departure, if at all it can be termed so, is that the area of the common property is now less than originally pleaded.

[33] On that premise, I do not think a valid objection can be made to the plaintiff now reducing his claim. Based on the evidence, a lesser area was shown to be common property, unlike what was initially thought to be so. I find there to be no legal impediment in a party reducing his claim at the end of the trial in line with the evidence adduced.

[34] I also do not find the defendant to be prejudiced in any way by the reduction in the plaintiff's claim. The defence position is that the entire area for which it received compensation belongs to the defendant as it comprises of surface car parks. If a lesser area is now claimed, it would not cause any alteration in the character of the defence. In the light of the defence position, it ought to be immaterial whether the plaintiff claims the entire acquired area or only part of the acquired area to be common property.

[35] To my mind, the reduction of the plaintiff's claim is not unlike other claims for a liquidated sum where the evidence at the trial shows the amount owed by a defendant to be less than what the plaintiff originally claimed for, and the plaintiff reduces its claim accordingly. In such instances, courts have, in making a finding of liability, awarded a lesser sum than that claimed for in the statement of claim.

Whether The Plaintiff Is Now Estopped From Claiming A Portion Of The Compensation Monies For Its Failure To Participate In The Inquiry To Determine Compensation

[36] The defendant contends that the plaintiff did not have recourse to the proceedings provided for in the LAA although it was aware of the land acquisition.

[37] The plaintiff does not deny that it was aware of the land acquisition. At the tenth Annual General Meeting of the plaintiff held on 17 August 2017, the proposed LRT3 project was a matter on the agenda.

[38] The defendant contends that as the plaintiff was aware of the acquisition, it ought to have attended the enquiry on 12 November 2018 to make its claim. Further, after the enquiry was concluded, the plaintiff should have instituted land reference proceedings under s. 37 of the LAA which allows objections to be made in respect of persons to whom the compensation is payable and the apportionment of the compensation. Its failure to do so operates as an estoppel to its claim.

[39] I do not find any merit in the submission for the following reasons. It is in evidence that the plaintiff was never served with the requisite forms provided in the LAA. Form E, the notice of enquiry was served on the defendant. Similarly Form F, the notice to require evidence in enquiry was also served on the defendant. When the award was made on 12 November 2018, the notice of award and offer of compensation in Form H was addressed to the defendant. Finally, when formal possession of the land was taken, Form K was addressed to the defendant. The actions of the Land Administrator are not surprising as the defendant was, at the material times, the registered proprietor of the land.

[40] There is no question of the plaintiff instituting land reference proceedings under s. 37 of the LAA, as the provision does not arise here. Section 37 only applies to an interested person who has made a claim under s. 10 of the LAA. The section provides:

> **Application To Court**
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> 37. (1) **Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11**, has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to:
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> (a) the measurement of the land;
>
> (b) the amount of the compensation;
>
> (c) the persons to whom it is payable;
>
> (d) the apportionment of the compensation
>
> (emphasis added)

[41] The operative words in this section are "any person ... pursuant to a notice under ss. 10 or 11 has made a claim to the Land Administrator in due time." The defendant must prove that notice was duly served on the plaintiff in accordance with the provisions in the LAA. There is no such evidence forthcoming from the defendant. It is therefore not open to the defence to contend that the provisions of s. 37 applies to the plaintiff.

[42] PW3, one of the committee members of the plaintiff testified that the acquisition first came to light at the tenth AGM. Prior to the AGM, the plaintiff was kept in the dark. However, at the said AGM, upon being informed about the acquisition, the matter of compensation was raised. At the meeting, Datin Zubaidah Bunyamin (DW1) identified as DZB in the minutes, represented the developer.

[43] The minutes record that, "To the query whether the compensation would be shared with the MC, DZB said she could not reply in the affirmative, as the plans needed to be checked whether it belonged to the MC

or to the registered land owner." In his evidence, PW3 said that the plaintiff "was relying on the developer to tell us what was the compensation we were entitled to."

[44] At the subsequent 11th AGM held on 19 September 2018, the matter of compensation was again raised. I note that the minutes addressed a query on the value of the land taken in acquisition. Again, DW1 responded on the issue. She informed the meeting of the possible timeline for payment of compensation, and also the submission for issuance of strata titles thereafter.

[45] In the light of the responses by DW1, PW3 stated that the plaintiff relied on the defendant to update them on the compensation. It's reliance on DW1 is not unreasonable as she had on various occasions represented that she was in the know as to the acquisition process. However, when the defendant was paid the compensation amount, the plaintiff was not informed.

[46] To conclude on the point on estoppel, I find it to be without merit. The cases cited by the defendant on the estoppel point is unrelated to the factual matrix here. In addition, the plaintiff's claim is founded on the fact that the defendant held part of the compensation monies as a constructive trustee. The claim has nothing to do with the issues raised in a land reference under s. 37 of the LAA.

Whether Part Of The Acquired Land Is Common Property

[47] I now come to the central issue in this case; what comprised the acquired land.

[48] The defendant's position is that the acquired land comprised car parks, and the issue of ownership of car parks had been settled by the Court of Appeal decision in *Perantara Properties Sdn Bhd v. JMC-Kelana Square & Another Appeal* [2016] 5 CLJ 367.

[49] To my mind, the decision of the Court of Appeal has no bearing on the present case. The plaintiff is not attempting to re-litigate the issue already ventilated in the Court of Appeal. There is no claim for the compensation in respect of car parks area. The plaintiff's claim is that the acquired area did not comprise only of car parks, but common property as well. It is obvious that its claim is restricted to the area which comprised common property.

[50] At the outset, it ought to be mentioned that the defence does not dispute that areas apart a parcel and accessory parcel, is by default, common property. In any event, it is indisputable as the definition of common property in s. 4 of the Strata Titles Act 1985 makes the position clear. It is defined as "so much of the lot as is not comprised in any parcel (including any accessory parcel), or any provisional block as shown in an approved strata plan."

[51] The High Court in *3 Two Square Sdn Bhd v. Perbadanan Pengurusan 3 Two Square & Ors; Yong Shang Ming (Third Party)* [2018] 4 CLJ 458 held that common property is defined by exclusion:

> ... the definition of "common property" in the Strata Titles Act 1985 defines it by exclusion: common property is simply that which is not a parcel. Accordingly, there is no need for there to have been labels affixed to the relevant areas to be designated as common property; all the areas that are not identified as parcels will automatically be regarded as common property.

[52] To reiterate, the plaintiff's case is that part of the acquired land comprised common property, which was made up of three refuse chambers, staircase and several pockets of vacant land.

[53] In support of its claim, the plaintiff called two witnesses, whose evidence I consider to be material on this issue. The first is Sr Long Chan Pai (PW1), the licensed surveyor appointed by the defendant to submit plans for issuance of strata titles. He was then attached to Ukur Kemas, a consulting firm.

[54] I have considered his evidence was that on 20 August 2014, Ukur Kemas submitted the application for subdivision to JUPEM. In furtherance of the application, PW1 then prepared the first set of accessory parcel plan dated 12 June 2015. The plan submitted was in relation to the surface car parks. On 8 March 2016, JUPEM informed PTG that the plans were found to be in order.

[55] The plaintiff's second witness is Sr Mok Kam Loong (PW2), a licensed surveyor with Jurukur Warisan Sdn Bhd. He was engaged by the plaintiff to determine how much of the acquired land comprised both car parks and common property.

[56] He examined the acquisition plan attached to Form K and noted the area acquired to look like an inverted "L". (See: B1-239). He stated that all the surveyor's bearings are mentioned which allowed him to identify the exact location of the acquired land at Kelana Square. The area marked is similar to the detailed acquisition plan prepared by MRCB George Kent Sdn Bhd on behalf of Prasarana, in May 2018.

[57] PW2 then cross-referred to the drawings in the key plan, location plan and site plan that was prepared for the development and approved on 11 May 2001 (See: B1-51) and found that the acquired land correspond to areas marked as:

(i) car park lots;

(ii) motorbike parking lots;

(iii) rubbish chambers; and

(iv) open space or vacant lot.

[58] Next, he prepared a plan titled "pelan pra-hitungan" (pre-computation plan) dated 1 July 2020 to address the issue in his terms of reference. Based on the drawings in the key plan, location plan and site plan approved in 2001 and the surveyor's bearings therein, the total accessory parcel area was 1,027 sqm. After taking into account the area acquired of 2,284 sqm, he then arrived at a common property area of 1,257 sqm.

[59] The area of 1,257 sqm was subsequently revised when he did a search at the land office and had sight of the first set of accessory parcel plan prepared by PW1 on 12 June 2015 and approved by JUPEM on 8 March 2016.

[60] Upon examining the plan, the measurements became more definite. He then revised his findings on the area computed as common property.

[61] As his evidence is material, the relevant portion of his witness statement is produced *in extenso* as follows:

> When I made my search at the Land Office, Sr Long Chan Pai strata plan dated 12/6/2015 were approved by JUPEM on 8/3/2016 pursuant to Sec. 10(9)(a) Strata Titles Act 1985 (this section is no longer applicable now.) There is a letter from JUPEM dated 8/3/2016 which is found at Page 212 E.83.
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> From the marking on the Plans are Pelan Petak Aksesori prepared by Sr. Long Chan Pai.
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> The dates are important, the land acquisition was completed on 28/5/2019 when Borang K is issued by the Land Administrator.
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> The 1st set of strata plans prepared by Sr Long Chan Pai are dated 12/6/2015. He has identified the following accessory parcels which are attached to Parcel No. 1

Page	Accessory Parcels	Sq. M.	Usage	Total
115	A34(1)	259	Car Park	
	A36(1)	12	Car Park	
	A38(1)	114	Car Park	
	A39(1)	81	Car Park	
	A40(1)	24	Car Park	
	A3 (1)	127	Car Park	
	A6 (1)	254	Car Park	
116	A7 (1)	92	Car Park	
	A8 (1)	38	Car Park	
	A9 (1)	35	Car Park	1,036m2

115	A41 (1)	44	Motorcycle Lane	
	A42 (1)	44	Motorcycle Lane	
	A43 (1)	48	Motorcycle Lane	
	A1 (1)	14	Motorcycle Lane	
	A2 (1)	16	Motorcycle Lane	
116	A11 (1)	10	Motorcycle Lane	
	A13 (1)	29	Motorcycle Lane	205m2

Based on Sr. Long Chan Pai's strata plan dated 12/6/2015, the accessory parcel before the land acquisition measures at 1,242 sqm (1,036 + 205 + 1).

The prefix "A" denotes Accessory Parcels.

I made some adjustment on site since the carpark bays and motorcycle bays on the left side of the plan were not acquired in full. Therefore, my calculation for Accessory Parcels measures at 1,163 sqm and the vacant land/rubbish chambers which are common properties measures at 1,121 sqm. This calculation is mentioned in drawing which is found on Page 282 E.83.

[62] In summary, his computation premised on the documents he examined is that 1,121 sqm comprises of vacant land/rubbish chambers which is common property. The balance area of 1,163 sqm is taken for car parks.

[63] I consider PW2 to be an expert witness as the computation of common property and accessory parcel based on plan drawings pertains to a technical subject. His findings and the basis for such findings are of great relevance and assistance to the court.

[64] There are numerous authorities on the role of experts, and it suffices to refer to the recent Federal Court judgment in *Teoh Kiang Hong v. Theow Say Kow & Other Appeals* [2025] 2 CLJ 683; [2025] 1 MLJ 813 where it was held:

> [138] ... The role of an expert is to assist the court in understanding the matters within the sphere of his expertise, in order for the court to form its own opinion on the same. In *Pubalan a/l Peremal v. Pendakwa Raya* [2020] 5 MLJ 442, Vernon Ong FCJ enunciated the following:
>
> > An expert witness's overriding duty is to provide independent, impartial, and unbiased evidence to the court. The fact that the expert witness is called by one party does not detract from the overriding duty to the court. It is the duty of an expert witness to assist the court on the matters within his expertise. This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.

A [139] Having had the assistance of an expert, the duty still lies with the court to make the ultimate finding on the disputed issue of fact. Such determination cannot be left entirely to the expert witness. This was what stated by Raja Azlan Shah, CJ (Malaya) in *Wong Swee Chin v. Public Prosecutor* [1981] 1 MLJ 212 (FC) that:

B > ... Our system of jurisprudence does not generally speaking, remit the determination of dispute to experts. Some questions are left to the robust good sense of a jury. Others are resolved by the conventional wisdom of a judge sitting alone. In the course of elucidating disputed questions, aids in the form of expert opinions are in appropriate cases placed before juries or judges. But, except
C > on purely scientific issues, expert evidence is to be used by the court for the purpose of assisting rather than compelling the formulation of the ultimate judgments. In the ultimate analysis it is the tribunal of fact, whether it be a judge or jury, which is required to weigh all the evidence and determine the probabilities. It cannot transfer this task to the expert witness, the court must
D > come to its own opinion.

(See also *Syed Abu Bakar bin Ahmad v. Public Prosecutor* [1984] 2 MLJ 19.)

[140] And when expert opinion is admissible, it then becomes a question of value or weight to be attached to such evidence taking into consideration other facts and circumstances of the case. In *Junaidi bin*
E *Abdullah v. Public Prosecutor* [1993] 3 MLJ 217, the Supreme Court made the following observations:

F > ... But in the final analysis in a non-jury trial, it is for the trial judge himself as both judge of fact and law to determine the weight to be attached to such evidence notwithstanding the outstanding qualification or experience (or lack of it) of the expert.

[65] Having considered his findings and the basis for his eventual conclusion that 1,121 sqm is common property, I find this opinion to be logical, reasonable and persuasive. Notwithstanding rigorous cross-examination, his evidence was not shaken.

G

[66] More significantly, the defendant did not offer any rebuttal evidence on the critical issue of common property area by the defendant. Apart from DW1, no other witnesses were called in defence. Therefore, as matters stand, the only expert evidence before the court is that of PW3's.

H **[67]** Apart from the evidence of PW3, there is corroborative evidence that the acquired land comprised of areas other than car parks. The minutes of the first preparatory meeting for LRT3 construction was tendered in evidence. DW1 chaired the meeting. The minutes are relevant, and it is reproduced as below:

I > (d) The Jabatan Ukur Dan Pemetaan Negeri Selangor had *via* letter dated 8 March 2016 verified the proposed strata plans but due to the receipt of the notice dated 3 April 2017 for the land acquisition

together with the Government of Selangor *Gazette* dated 23 February 2017, the State Authority had suspended the further processing of the application for the issuance of the individual strata titles.

(e) The final land meeting conducted by the Ketua Pengarah Tanah dan Galian Persekutuan Negeri Selangor had concluded the last land hearing held on November 2018, whereby all related parties has agreed that the total land area to be acquire from Perantara is 2,284.582 square meter, copies of the plans were provided.

(f) Other than vacant land, it was noted that **three (3) rubbish chambers, car park office, boom gates islands and car park parcels were included in the acquired land**, copies of plans were provided.

(j) Next, Perantara will call for the quotation to construct one central unit Refuse Chambers at the new location and anticipate to commence work in March/April 2019 and the JMC will be informed in due course.

(emphasis added)

[68] In my view, this evidence substantiates the plaintiff's claim that the acquired land in fact included more than car parks. It also included three rubbish chambers, car park office, boom gates islands all of which are common properties. The minutes is irrefutable evidence that the defendant concedes the acquired land comprised of more than car parks. This itself demolishes the defence of the defendant.

[69] In the face of such compelling evidence, I have no hesitation in finding that the acquired land included the common property, and in the evidence of PW2, the area was 1,121 sqm.

[70] It therefore follows that the defendant's entitlement to the compensation sum must be limited to the portion in respect of the car parks, *ie*, 1,163 sqm. It is not entitled to compensation over and above that.

[71] As the defendant had received compensation monies paid for land which did not form part of the car parks but common property, I find merit in the plaintiff's contention that it holds part of the compensation monies as a constructive trustee for the plaintiff. My reasons are as follows.

[72] Section 17B of the Strata Titles Act 1985 provides:

Ownership of common property and custody of issue document of title

17B. (1) The management corporation shall become the proprietor of the common property and the custodian of the issue document of title of the lot.

(2) Subject to subsection (3), the management corporation shall, in relation to the common property, have the powers conferred by the National Land Code on a proprietor in relation to its land.

[73] Although there is no management corporation established yet as it is only formed when strata titles have been issued (s. 17(3) of the Strata Titles Act 1985), it is an eventual successor to the plaintiff.

[74] In view of the proprietary right the plaintiff has in the common property, it follows that it has a right to part of the compensation monies. As the defendant has received it, it holds in trust for the plaintiff as a constructive trustee.

[75] The Federal Court in *Perbadanan Kemajuan Pertanian Selangor v. JW Properties Sdn Bhd* [2017] 8 CLJ 392; [2017] MLJU 1107, explained the concept of constructive trust as follows:

> [57] It is to be noted that a constructive trust is a creature of equity. By its very nature, whether or not a constructive trust arises in the absence of the consent of the State Authority to transfer the land is very much dependent on the facts of the case. As regards the present case a relevant factor to consider is whether there was any unconscionable conduct on the part of the appellant which would attract the intervention of equity.
>
> [58] From decided case authorities it has been established as a principle of law that constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of the property (usually but not necessarily the legal owner) to assert his own beneficial interest in the property and deny the beneficial interest of another. [See the cases of (1) *Takako Sakao (f) v. Ng Pek Yuen (f) & Anor.* (2009) 6 MLJ 751 (FC) and (2) *Vellasamy a/l Pennusamy & Ors. (on their behalf and for the 213 sub-purchasers of plots of land known as PN 35553, Lot 9108, Mukim Hutan Melintang, Hilir Perak) v. Gurbachan Singh a/l Bagawan Singh & Ors.* (2010) 5 MLJ 437 (CA).
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> [59] It has also been held that a constructive trust is a trust which is imposed by equity in order to satisfy the demands of justice and good conscience without reference to any express or presumed intention of the parties. [See the case of *Hassan Kadir & Ors. v. Mohamed Moidu Mohamed & Anor* (2011) 5 CLJ 136 (FC)]. A constructive trust is a remedial device that is employed to prevent unjust enrichment. It has the effect of taking the title to the property from one person whose title unjustly enriches him, and transferring it to another who has been unjustly deprived of it. [See the case of *Tay Choo Foo @ Tay Chiew Foo v. Tengku Mohd Saad @ Tengku Ahmad bin Tengku Mansur & Ors. (all acting as administrators of the estate of Tengku Mansur bin Tunku Yaacob, deceased) & Another Appeal* (2009) 1 MLJ 289 CA].
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> (See also: *RHB Bank Bhd v. Travelsight (M) Sdn Bhd & Ors And Another Appeal* [2016] 1 MLJ 17; *IB Capital Sdn Bhd v. Ivory Indah Sdn Bhd & Anor* [2021] MLJU 1388 (CA))

Whether The Plaintiff's Claim Can Be Computed Based On Market Value Determined By The Land Administrator At The Inquiry

[76] Having determined the issue of liability, I shall now deal with the computation of the plaintiff's claim. The plaintiff has adopted a straightforward mathematical formula by multiplying the area of common property with the market value as decided upon by the Land Administrator at the enquiry. Evidence in respect of this computation was given by PW2. He stated as follows:

> Based on Borang H dated 12/11/2018 the Land Administrator has valued the land at RM5,4000 per sq m and I have measured the common property at 1,121 sqm. The Borang H is found from pages 153-154 E.83.
>
> Therefore, the correct computation payable by Prasarana Malaysia Bhd for the common property portion will be RM6,053,400.00 (1,121 sqm x RM5,400 per sq m).

[77] The defendant takes issue with this method of computation. It contends that car parks do not have the same value as vacant land or refuse chambers. However, apart from the submission made, no evidence was led on this issue. It is trite that a party asserting a fact bears the burden of proving the fact. Instead the defence contends that the plaintiff ought to lead evidence on the valuation of the land relied on.

[78] I find the defendant to be misconceived in the position taken. Contrary to its contention, the burden is in fact on the defendant to prove that there is a difference in the value of the land depending on the use to which it is put. In the absence of any evidence on the issue, I give no weight to the submission.

[79] Instead, I find the plaintiff's reliance on the valuation of the Land Administrator at RM5,400 per sqm to be correct. In determining compensation, the Land Administrator is to have regard to the principles in determining market value as provided for in the First Schedule to the LAA. Market value is determined for the entire area acquired at the material date with no distinction made for car parks or common property. If there was any loss arising from a particular use to which the land was put to, compensation can be provided for. In this case, the defendant was compensated for the loss occasioned from the acquisition of its car parks, development costs and other expenses totaling RM1,225,349.20. (See: Borang H). The plaintiff is not making a claim on this amount.

[80] Premised on the foregoing reasons, I find the plaintiff to have succeeded in proving on a balance of probabilities, that 1,121 sqm of the acquired land comprised of common property, and that the sum of RM6,053,400 is held by the defendant as a constructive trustee for the plaintiff.

Reliefs To Be Ordered

[81] It leaves me now to decide on the reliefs prayed for by the plaintiff. The declarations in para. 12(a)-(d) of the statement of claim is in part academic, and in part does not arise from the evidence led, as the principal claim is a monetary judgment. Counsel for the plaintiff concedes that the declarations need not be issued in view of the findings of this court.

[82] The plaintiff has also sought exemplary damages against the defendant for its conduct in withholding information pertaining to the payment of the compensation monies from it. It contends that the conduct exhibited was contumelious and an award of exemplary damages is justified in the circumstances.

[83] Whilst there appears to be some justification for the complaint against the defendant, I am not persuaded that the conduct warrants an award for exemplary damages on the facts of this particular case. I am of the view that the conduct would have to be more reprehensible than a mere withholding of information to attract an award of exemplary damages. The facts must fall within the principles enunciated in *Rookes v. Barnard* [1964] 1 All ER 367 where the purpose is to punish the wrongdoer in cases of (i) oppressive, arbitrary or unconstitutional actions by the servants of the Government; (ii) where the defendant's conduct was calculated to make a profit for himself; (iii) where a statute expressly authorises the exemplary damages. The factual matrix of this case does not fit into any of the categories.

Conclusion

[84] Premised on the foregoing reasons, I order as follows:

(i) the defendant is to pay the plaintiff the amount of RM6,053,400 with interest at the rate of 5% from date of 13 November 2019 being the date of filing this writ of summons until realisation; and

(ii) costs of RM30,000 to be awarded to plaintiff.